

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 226

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

Carroll H. Leavell

AN ACT

RELATING TO WORKERS' COMPENSATION; AMENDING THE TAX REFUND INTERCEPT PROGRAM ACT TO INCLUDE CERTAIN DEBTS BY EMPLOYERS INCURRED UNDER THE WORKERS' COMPENSATION ACT OR THE WORKERS' COMPENSATION ADMINISTRATION ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-2C-2 NMSA 1978 (being Laws 1985, Chapter 106, Section 2, as amended) is amended to read:

"7-2C-2. PURPOSE.--

A. The purpose of the Tax Refund Intercept Program Act is to comply with state and federal law:

(1) by enhancing the enforcement of child support and medical support obligations;

(2) to aid collection of outstanding debts owed for:

.160458.1

underscored material = new
~~[bracketed material] = delete~~

underscoring material = new
[bracketed material] = delete

1 (a) overpayment of public assistance and
2 overissuance of food stamps; [~~and~~]

3 (b) overpayment of unemployment
4 compensation benefits and nonpayment of contributions or
5 payments in lieu of contributions or other amounts due under
6 the Unemployment Compensation Law;

7 (c) nonpayment of reimbursements owed to
8 the uninsured employers' fund under the Workers' Compensation
9 Act; and

10 (d) nonpayment of the workers'
11 compensation fee due under the Workers' Compensation
12 Administration Act;

13 (3) to promote repayment of educational loans;

14 (4) to aid collection of fines, fees and costs
15 owed to the district, magistrate and municipal courts;

16 (5) to aid collection of fines, fees and costs
17 owed to the Bernalillo county metropolitan court; and

18 (6) to aid in the payment to the state
19 investment officer of film production tax credit amounts owed
20 to the state investment officer due to [~~a loan~~] loans made
21 against the credit pursuant to Subsection D of Section
22 7-27-5.26 NMSA 1978.

23 B. Efforts to accomplish the purpose of the Tax
24 Refund Intercept Program Act may be enhanced by establishing a
25 system to collect debts, in particular, outstanding child

.160458.1

underscored material = new
[bracketed material] = delete

1 support obligations, educational loans, amounts due under the
2 Unemployment Compensation Law, the Workers' Compensation Act
3 and the Workers' Compensation Administration Act, fines, fees
4 and costs owed to the district, magistrate and municipal
5 courts, film production tax credit amounts owed to the state
6 investment officer and fines, fees and costs owed to the
7 Bernalillo county metropolitan court, by setting off the amount
8 of such debts against the state income tax refunds or film
9 production tax credit amounts due the debtors."

10 Section 2. Section 7-2C-3 NMSA 1978 (being Laws 1985,
11 Chapter 106, Section 3, as amended) is amended to read:

12 "7-2C-3. DEFINITIONS.--As used in the Tax Refund
13 Intercept Program Act:

14 A. "claimant agency" means the taxation and revenue
15 department or any of its divisions, the human services
16 department, the employment security division of the labor
17 department, the workers' compensation administration, any
18 corporation authorized to be formed under the Educational
19 Assistance Act, a district, magistrate or municipal court or
20 the Bernalillo county metropolitan court;

21 B. "debt" means a legally enforceable obligation of
22 an employer subject to the Unemployment Compensation Law, the
23 Workers' Compensation Act and the Workers' Compensation
24 Administration Act, or an individual to pay a liquidated amount
25 of money that:

.160458.1

underscored material = new
[bracketed material] = delete

1 (1) [~~that~~] is equal to or more than one
2 hundred dollars (\$100);

3 (2) [~~that~~] is due and owing a claimant agency,
4 which a claimant agency is obligated by law to collect or
5 which, in the case of an educational loan, a claimant agency
6 has lawfully contracted to collect;

7 (3) [~~that~~] has accrued through contract, tort,
8 subrogation or operation of law; and

9 (4) [~~that in the case of an amount due under~~
10 ~~the Unemployment Compensation Law, has been secured by a~~
11 ~~warrant of levy and lien or, in all other cases, has been~~
12 ~~reduced to judgment~~] either:

13 (a) has been secured by a warrant of
14 levy and lien for amounts due under the Unemployment
15 Compensation Law or workers' compensation fees due under the
16 Workers' Compensation Administration Act; or

17 (b) has been reduced to judgment for all
18 other cases;

19 C. "debtor" means any employer subject to the
20 Unemployment Compensation Law, the Workers' Compensation Act
21 and the Workers' Compensation Administration Act, or any
22 individual owing a debt;

23 D. "department" or "division" means, unless the
24 context indicates otherwise, the taxation and revenue
25 department, the secretary of taxation and revenue or any

.160458.1

underscored material = new
[bracketed material] = delete

1 employee of the department exercising authority lawfully
2 delegated to that employee by the secretary;

3 E. "educational loan" means any loan for
4 educational purposes owned by a public post-secondary
5 educational institution or owned or guaranteed by any
6 corporation authorized to be formed under the Educational
7 Assistance Act;

8 F. "medical support" means amounts owed to the
9 human services department pursuant to the provisions of
10 Subsection B of Section 40-4C-12 NMSA 1978;

11 G. "public post-secondary educational institution"
12 means a publicly owned or operated institution of higher
13 education or other publicly owned or operated post-secondary
14 educational facility located within New Mexico;

15 H. "spouse" means an individual who is or was a
16 spouse of the debtor and who has joined with the debtor in
17 filing a joint return of income tax pursuant to the provisions
18 of the Income Tax Act, which joint return has given rise to a
19 refund that may be subject to the provisions of the Tax Refund
20 Intercept Program Act; and

21 I. "refund" means a refund, including any amount of
22 tax rebates or credits, under the Income Tax Act or the
23 Corporate Income and Franchise Tax Act that the department has
24 determined to be due to an individual or corporation."

25 Section 3. Section 7-2C-6 NMSA 1978 (being Laws 1985,

.160458.1

underscoring material = new
~~[bracketed material]~~ = delete

1 Chapter 106, Section 6, as amended) is amended to read:

2 "7-2C-6. PROCEDURES FOR SETOFF--NOTIFICATIONS TO
3 DEBTOR.--

4 A. Each year a claimant agency seeking to collect a
5 debt through setoff shall notify the department in the manner
6 and by the date required by the department, which date shall be
7 in the period from November 1 through December 15. The notice
8 to the department shall include the amount of the debt, the
9 name and identification number of the debtor and such other
10 information as the department may require. The notice shall
11 also include certification that the debt is due and owing the
12 claimant agency or that the claimant agency is obligated by law
13 to collect the debt. This notice shall be effective only to
14 initiate setoff against refunds that would be made in the
15 calendar year subsequent to the year in which notification is
16 made to the department.

17 B. The claimant agency shall inform the department
18 within one week of any changes in the status of any debt
19 submitted by the claimant agency for setoff.

20 C. Upon proper and timely notification from the
21 claimant agency, the department shall determine whether the
22 debtor is entitled to a refund of at least fifty dollars
23 (\$50.00). The department shall notify the claimant agency in
24 writing, or in such other manner as the department and the
25 claimant agency may agree, with respect to each debt accepted

.160458.1

underscoring material = new
~~[bracketed material] = delete~~

1 for setoff whether the debtor is due a refund of fifty dollars
2 (\$50.00) or more and, if so, the amount of refund, the address
3 of the debtor entered upon the return and, if the refund arises
4 from a joint return, the name and address of the spouse as
5 entered upon the return.

6 D. Within ten days after receiving the notification
7 from the department pursuant to Subsection C of this section,
8 the claimant agency shall send a notice by first class mail to
9 the debtor at the debtor's last known address. The notice
10 required by this subsection shall include:

11 (1) a statement that a transfer of the refund
12 will be made and that the claimant agency intends to set off
13 the amount of the transfer against a claimed debt;

14 (2) the amount of the debt asserted and a
15 description of how the debt asserted arose;

16 (3) the name, address and telephone number of
17 the claimant agency;

18 (4) the amount of refund to be set off against
19 the debt asserted;

20 (5) a statement that the debtor has thirty
21 days from the date indicated on the notice to contest the
22 setoff by applying to the claimant agency for a hearing with
23 respect to the validity of the debt asserted by that agency;
24 and

25 (6) a statement that failure of the debtor to

.160458.1

underscoring material = new
[bracketed material] = delete

1 apply for a hearing within thirty days will be deemed a waiver
2 of the opportunity to contest the setoff and to a hearing.

3 E. If the refund against which a debt is intended
4 to be set off results from a joint tax return, the claimant
5 agency shall send a notice by first class mail to the spouse
6 named on the return within ten days after receiving the
7 notification from the department pursuant to Subsection C of
8 this section. The notice to the spouse shall contain the
9 following information:

10 (1) a statement that a transfer of the refund
11 will be made and that the claimant agency intends to set off
12 the amount of the transfer against a claimed debt;

13 (2) the total amount of the refund and the
14 amount of each claimed debt;

15 (3) the name, address and telephone number of
16 the claimant agency;

17 (4) a statement that no debt is claimed
18 against the spouse and that the spouse may be entitled to
19 receive all or part of the refund regardless of the claimed
20 debt against the debtor spouse;

21 (5) a statement that to assert a claim to all
22 or part of the refund, the spouse [~~must~~] shall apply to the
23 claimant agency for a hearing within thirty days from the date
24 indicated on the notice with respect to the entitlement of the
25 spouse to all or part of the refund from which a transfer will

.160458.1

underscoring material = new
[bracketed material] = delete

1 be made at the request of the claimant agency; and

2 (6) a statement that failure of the spouse to
3 apply for a hearing within thirty days may be deemed a waiver
4 of any claim of the spouse with respect to the refund.

5 F. A debtor may contest the setoff of a debt by
6 applying to the claimant agency for a hearing within thirty
7 days of the date the notice required by Subsection D of this
8 section is sent to the debtor. Failure of the debtor to apply
9 for a hearing within the time required shall constitute a
10 waiver of the right to contest the debt or the setoff of the
11 debt.

12 G. A spouse may contest the setoff of a debt
13 against a refund to which the spouse claims entitlement in
14 whole or in part by applying to the claimant agency for a
15 hearing within thirty days of the date the notice required by
16 Subsection E of this section was sent to the spouse. Failure
17 of the spouse to apply for a hearing within the time required
18 shall constitute a waiver of the right to contest the setoff of
19 the debt against a refund to which the spouse may claim
20 entitlement.

21 H. The department shall apply against the refund
22 the amount of the claimed debt, not to exceed the amount of the
23 refund, and shall transfer that amount to the claimant agency
24 with an accounting of the amount transferred. When the amount
25 of refund due exceeds the amount of all applied debts, the

.160458.1

1 department shall treat the excess as it does other refunds
2 relating to income taxes.

3 I. Whether or not the refund due the debtor exceeds
4 the amount of the applied debt, the department shall notify the
5 debtor at the time of the transfer to the claimant agency of:

6 (1) the fact of the transfer and that the
7 claimant agency intends to set off the amount of the transfer
8 against the asserted debt;

9 (2) the total amount of the refund;

10 (3) the amount of debt asserted by the
11 claimant agency; and

12 (4) the name, address and telephone number of
13 the claimant agency.

14 J. Once the department has sent to the debtor the
15 notice required by Subsection I of this section, together with
16 any excess of the amount of refund over the amount of asserted
17 debts, the department shall be deemed to have made the refund
18 required by the Income Tax Act or the Corporate Income and
19 Franchise Tax Act."

20 Section 4. Section 7-2C-11 NMSA 1978 (being Laws 1985,
21 Chapter 106, Section 11, as amended) is amended to read:

22 "7-2C-11. PRIORITY OF CLAIMS.--

23 A. Claims of the department take precedence over
24 the claim of any competing claimant agency, whether the
25 department asserts a claim or sets off an asserted debt under

.160458.1

underscored material = new
[bracketed material] = delete

1 the provisions of the Tax Refund Intercept Program Act or under
2 the provisions of any other law that authorizes the department
3 to apply amounts of tax owed against any refund due an
4 individual pursuant to the Income Tax Act.

5 B. After claims of the department, claims shall
6 take priority in the following order before claims of any
7 competing claimant agency:

8 (1) claims of the human services department
9 resulting from child support enforcement liabilities;

10 (2) claims of the human services department
11 resulting from medical support liabilities;

12 (3) claims resulting from educational loans
13 made under the Educational Assistance Act;

14 (4) claims of the human services department
15 resulting from AFDC liabilities;

16 (5) claims of the human services department
17 resulting from food stamp liabilities;

18 (6) claims of the employment security division
19 of the labor department arising under the Unemployment
20 Compensation Law;

21 (7) claims of a district court for fines, fees
22 or costs owed to that court;

23 (8) claims of a magistrate court for fines,
24 fees or costs owed to that court;

25 (9) claims of the Bernalillo county

.160458.1

underscoring = new
~~[bracketed material]~~ = delete

1 metropolitan court for fines, fees or costs owed to that court;

2 [~~and~~]

3 (10) claims of a municipal court for fines,
4 fees or costs owed to that court; and

5 (11) claims of the workers' compensation
6 administration arising under the Workers' Compensation Act or
7 the Workers' Compensation Administration Act."

8 Section 5. APPLICABILITY.--The provisions of this act
9 apply to tax refunds issued on or after January 1, 2007.

10 - 12 -